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**IN THE
COURT OF APPEALS OF INDIANA**

DAVID C. CARRINGTON,

Appellant,

vs.

LINDA S. CARRINGTON,

Appellee.

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No. 17A03-0703-CV-126

APPEAL FROM THE DEKALB CIRCUIT COURT
The Honorable Kirk D. Carpenter, Judge
Cause No. 17C01-0511-DR-155

September 17, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

David C. Carrington (“Husband”) appeals the trial court’s distribution of marital assets upon the dissolution of his marriage to Linda S. Carrington (“Wife”). He raises two issues for our review, which we consolidate and restate as whether the trial court abused its discretion in distributing the marital assets.

We remand with instructions.

FACTS AND PROCEDURAL HISTORY

Husband and Wife were married on August 17, 1974. On November 7, 2005, Husband filed a Petition for Dissolution of Marriage. While married, Husband and Wife had two sons, both of whom were emancipated prior to Husband’s initiation of dissolution proceedings.

During the marriage, Husband was employed as a teacher at Garrett Middle School. Since 1996 or 1997, he also owned Summit Camps, a business he started with former Indiana University basketball player Damon Bailey. Husband and Bailey split the net proceeds from the camps equally. Also, in 2003 or 2004, Husband began a business venture selling fireworks. Husband and the manager of the fireworks business split the net proceeds equally. Wife was a stay-at-home mother until 1987, when she began working at Garrett State Bank in the bookkeeping department. She managed the family finances for the duration of the marriage. At the time of dissolution, the net value of the marital estate exceeded one million dollars.

Also during the marriage, Husband received inheritance and gifts totaling approximately \$90,000. He considered such gifts and inheritance to be joint property

and used them to purchase joint marital assets and pay joint marital debt. Less than two years before the dissolution proceedings began, Wife inherited approximately \$313,000 from her mother. Wife deposited the funds into accounts in only her name, and, at her request, Husband signed a waiver on any interest in one of those accounts. However, Wife eventually used approximately \$99,000 of her inheritance toward the purchase of marital assets or payment of marital debt.

At the final hearing, the parties presented evidence regarding the value of the marital estate, and, in relevant part, they disputed the proper distribution of Wife's inheritance. On February 6, 2007, the trial court entered its Decree of Dissolution of Marriage ("Decree"), which included findings of fact and conclusions thereon. The Decree provides, in relevant part:

11. [Husband] received inheritance and/or gifts from his grandparents and parents during the course of the marriage and believed the amount he received totaled approximately \$90,000.00 which funds went into increasing the parties['] marital estate, some of which was used to improve a former marital residence and another sum was used as a down payment on another marital residence they ow[n]ed when the dissolution was filed, and [Husband] always considered the money he received as an inheritance because his siblings received the same amounts each time he received money from his grandparents or parents.
12. During the period of time covering approximately 1 year to 1 1/2 years prior to the filing of the Verified Petition for Dissolution of Marriage, [Wife] received an inheritance from her mother's estate in a net amount of \$313,341.08.
13. Approximately \$99,000.00 of [Wife's] inheritance had been co-mingled with the parties['] joint accounts.
14. [Wife] argues that [Husband] is not entitled to any share of the inheritance from her mother's estate because she had received the

inheritance so late in the marriage[;] however, the Court does not agree.

15. [Husband] argues that the entire inheritance [Wife] received should be included not only as a [marital] asset, but subject to division of marital assets and that he should receive at least 50% of the total marital assets.
16. The Court finds that the funds that have been co-mingled from both parties['] inheritances are marital assets subject to treatment by the Court as divisible property.
17. The Court finds that the total inheritance received by [Wife] from her mother's estate is a marital asset[;] however, the portion therefrom that was never co-mingled, never added to or managed by [Husband], should not be divisible by the Court and is therefore set aside to [Wife] free and clear from any claim thereto by [Husband] without comparable award to him.

* * *

19. The Court finds, pursuant to Indiana Code 31-15-7-5, that an equal division and distribution of the marital property and marital debts between the parties is fair, just, and reasonable and that neither of them [has] rebutted that statutory presumption and it is the intent of the Court to make an equal division and distribution of the marital estate so far as possible based upon the evidence presented to the Court.

Appellant's App. at 71-73. Husband appeals.

DISCUSSION AND DECISION

When the trial court has entered findings and conclusions pursuant to Indiana Trial Rule 52, we apply the following two-tiered standard of review: whether the evidence supports the findings and whether the findings support the judgment. Staresnick v. Staresnick, 830 N.E.2d 127, 131 (Ind. Ct. App. 2005). The trial court's findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them. Id. A judgment is clearly erroneous

when a review of the record leaves us with a firm conviction that a mistake has been made. Id. We neither reweigh the evidence nor assess the credibility of witnesses, but consider only the evidence most favorable to the judgment. Id. We review conclusions of law de novo. Id.

The division of marital assets lies within the sound discretion of the trial court, and we will reverse only for an abuse of discretion. Sanjari v. Sanjari, 755 N.E.2d 1186, 1191 (Ind. Ct. App. 2001). We may not reweigh the evidence or assess the credibility of witnesses, and we will consider only the evidence most favorable to the trial court's disposition of the marital property. Dall v. Dall, 681 N.E.2d 718, 720 (Ind. Ct. App. 1997). Although the facts and reasonable inferences might allow for a different conclusion, we will not substitute our judgment for that of the trial court. Bartley v. Bartley, 712 N.E.2d 537, 542 (Ind. Ct. App. 1999).

Here, Husband contends that the trial court abused its discretion when it distributed the marital property. In particular, he argues that the trial court erred because it did not address in the Decree all of the relevant factors to be considered when making an unequal division of the marital estate.¹ We disagree with Husband's contention that the trial court was required to list each of the statutory factors in the Decree. However, we conclude that we cannot discern from the findings and conclusions in the Decree

¹ Husband also alleges that the distribution ordered in the Decree is against the logic and effect of the facts and circumstances presented. Because we remand on another ground, we need not address that claim. However, if we were to review that claim, we note that the argument section of Husband's brief contains absolutely no citations to the Appendix to aid our review, and Wife, in the Argument section of her brief, cites to the Appendix only in a footnote. Each contention in the argument section of an appellate brief "must be supported by citations to the authorities, statutes, and the Appendix or other parts of the Record on Appeal relied on, in accordance with Rule 22." Ind. Appellate Rule 46(A)(8)(a), (B). We remind the parties that failure to provide such supporting citations to the appendix can result in waiver of an issue for review. See In re Commitment of A.W.D., 861 N.E.2d 1260, 1263 (Ind. Ct. App. 2007), trans. denied.

whether the trial court considered all of the factors as required under Indiana Code Section 31-15-7-5.

A trial court shall presume that an equal division of the marital property between the parties is just and reasonable. Ind. Code § 31-15-7-5. However, either party may rebut that presumption by presenting relevant evidence, including evidence concerning: (1) the contribution of each spouse to property acquisition; (2) the extent to which the property was acquired by each spouse prior to the marriage or through gift or inheritance; (3) the economic circumstances of each spouse at the time of property disposition; (4) each spouse's conduct in disposing of or dissipating property during the marriage; and (5) the earnings or earning ability of each spouse as related to a final property division. Id.

When a party challenges the trial court's division of marital property, he must overcome a strong presumption that the court considered and complied with the applicable statute, and that presumption is one of the strongest presumptions applicable to our consideration on appeal. Bartley, 712 N.E.2d at 542. When ordering an unequal division, the trial court must consider all of the factors set out in the statute. Wallace v. Wallace, 714 N.E.2d 774, 780 (Ind. Ct. App. 1999), trans. denied; accord Fobar v. Vonderahe, 771 N.E.2d 57, 59 (Ind. 2002). But the statute does not require the court to list those factors that do not justify the unequal division of property.² Shumaker v. Shumaker, 559 N.E.2d 315, 318 (Ind. Ct. App. 1990). Instead, if the trial court orders an

² When Shumaker was decided, the statute at issue was codified at Indiana Code Section 31-1-11.5-11(c). That statute has since been recodified in relevant part at Indiana Code Section 31-15-7-5, which is identical in substance to its predecessor.

unequal division, it need only address in the dissolution decree the factors that support that deviation. Id.

We first note that Indiana Code Section 31-15-7-4(a) provides:

In an action for dissolution of marriage under [Indiana Code Section] 31-15-2-2, the court shall divide the property of the parties, whether

- (1) owned by either spouse before the marriage;
- (2) acquired by either spouse in his or her own right:
 - (A) after the marriage; and
 - (B) before final separation of the parties; or
- (3) acquired by their joint efforts.

That statute requires inclusion in the marital estate of all property owned by the parties before the date of separation, including inherited property. Grathwohl v. Garrity, 871 N.E.2d 297, 301 (Ind. Ct. App. 2007).

Here, in Finding 17, the trial court determined that Wife's total inheritance was marital property but, to the extent it was not commingled in the marital estate, it was not subject to division. Thus, the trial court set off that portion to Wife without an equal distribution to Husband. However, in Finding 19, the court concluded that the parties had not rebutted the presumption under Indiana Code Section 31-15-7-5 that an equal division of the marital property was just and reasonable. Appellant's App. at 73. These findings contradict each other.

Where provisions regarding property distribution in a dissolution decree are inconsistent, this court has held that we should read the decree as a whole. In Maxwell v. Maxwell, 850 N.E.2d 969, 970 (Ind. Ct. App. 2006), the trial court set off to the

husband stock that he had inherited late in the marriage, without an equal distribution to wife. However, the trial court also found that the remainder of the assets should be divided equally between the parties, and it did not include the value of the inherited assets in the final calculations as to the total value of the marital estate. On review, this court read the decree as a whole and determined that the “findings and conclusions clearly demonstrate[d] that the trial court considered the [inheritance] as marital property, but that the facts and circumstances justified a deviation from a 50-50 split of the marital estate to effectively award the entire value of those assets to [the husband].”

Id.

Similarly, here, the trial court appeared to set off a portion of Wife’s inheritance to her without an equal distribution to Husband, but the court then stated that neither party had rebutted the statutory presumption that an equal division of the marital estate was fair and reasonable. Reading the Decree as a whole, and despite language to the contrary, we conclude that the trial court found that Wife had rebutted the presumption that an equal division was just and reasonable to the extent that it set off to her part of her inheritance without an equal distribution to Husband.

But that does not end our review. Because the trial court divided the marital estate unequally between the parties, we must next consider whether the trial court made adequate findings to justify that deviation. Here, the trial court set off to Wife the portion of her inheritance that was “never co-mingled, never added to or managed by” Husband. Appellant’s App. at 73. The fact that property was inherited by one party is one of the statutory factors to be considered by a trial court in distributing the marital estate. See

Ind. Code § 31-15-7-5(2)(B). But “[c]onsideration of whether the property was acquired by one of the parties through inheritance or gift is only one of the five factors a court should review. By focusing only upon one factor when others are present, a trial court runs the risk of dividing a marital estate in an unreasonable manner.” Wallace, 714 N.E.2d at 780.

A finding that property was inherited, without more, is insufficient to justify an unequal division of the marital estate. Grathwohl, 871 N.E.2d at 302. As we noted there:

[T]he trial court provided no explanation for why it did not include the inherited property in the marital estate, beyond simply reiterating that it was inherited property. In view of the fact that findings were requested of the trial court and that the mere fact of inheriting property does not require set off of that property to the spouse who inherited it, this was inadequate.

Id. (emphasis added). Here, the reasons stated by the trial court to justify setting off a portion of Wife’s inheritance to her without an equal distribution to Husband are that the asset was inherited solely by wife, was never co-mingled with Husband’s or joint assets, and was never added to or managed by Husband. But we cannot discern from the Decree whether the trial court considered any of the other statutory factors listed in Indiana Code Section 31-15-7-5.

We remand with instructions for the trial court to issue a revised Decree in accordance with this Opinion. In particular, in its revised Decree, the trial court should make findings showing that the court has taken into account not only Wife’s inheritance but the other statutory factors listed in Indiana Code Section 31-15-7-5 and state the reasons for its disposition of Wife’s inheritance.

Remanded.

MATHIAS, J., and BRADFORD, J., concur.